

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13794 OF 2018
(Ambadas s/o Rayabhan Mangate Vs. Ganesh s/o Gagannath
Mangate)

Mr.R.V.Gore, Advocate for the petitioner.
Mr.C.V.Dharurkar h/f Mr.N.A.Matkar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/01/2019

PER COURT :

1. The petitioner/original defendant is aggrieved by the order dated 06/10/2018 passed by the Trial Court vide which application Exh.43, seeking appointment of a Court Commissioner in RCS No.65/2012, has been rejected.

2. I have heard the learned Advocates for the respective sides, have gone through the application Exh.43 and the impugned order. Even a cursory glance at Exh.43 would indicate that this petitioner practically desires that the TILR should collect evidence with regard to the possession over the *Bakhar, Triguni, Mahadev Pind, Cattle Shed, water channel, etc.*

3. A Court Commissioner cannot be appointed for collecting

evidence. So also, this Court has consistently held that a Court Commissioner should be appointed after the conclusion of the recording of oral evidence. Some of such orders are as under :-

- (a) *Syed Mushtaque Ahmad Syed Ismail and others vs. Syed Ashique Ali Khan Haidar Ali, 2012 (1) ALL MR 80 : 2011 (6) Mh.L.J. 334.*
- (b) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar, 2017 (3) Mh.L.J. 314.*
- (c) *Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.*
- (d) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.*

4. Learned Advocate for the petitioner prays that liberty may be granted after the conclusion of the recording of oral evidence, to file an application for appointment of a Court Commissioner. Learned Advocate for the respondent submits that he should be permitted to

raise all grounds to oppose the said application.

5. In view of the above, this petition is disposed of. In the event any of the litigating sides prefers an application for appointment of a Court Commissioner after conclusion of the oral evidence, the Trial Court would consider the said application on its own merits.

(Ravindra V.Ghuge, J.)